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PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

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I. INTRODUCTION

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee proposals and contributions of States that relate to its mandated work. Most of the proposals and contributions contained in the present document were originally submitted prior to or during the Informal Preparatory Meeting of the Ad Hoc Committee, which took place in Buenos Aires from 31 August to 4 September 1998. Several of the proposals and contributions that were submitted by States during that meeting and are not contained in the present document have been incorporated into the new consolidated draft text of the Convention (see

A/AC.254/4). Other contributions were submitted to the Secretariat on the occasion of the third meeting of the informal group of Friends of the Chair, held in Vienna on 5 and 6 November 1998.

II. PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

Canada*

[Original: English]

Firearm protocol

1. In drawing up a draft text for negotiation of the firearm protocol to the United Nations Convention on Transnational Organized Crime, Canada supports the inclusion of measures that would give effect to the following principles:

(a) There must be no safe havens for those who participate in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

(b) States should adopt effective methods of firearm identification and tracing;

(c) Diversion into the illegal market of legally traded and held firearms must be prevented;

(d) States must improve cooperation and exchange of information and data for law enforcement purposes;

(e) States must pursue greater international cooperation through mutual assistance regimes in prosecutions relating to the illicit trafficking of and manufacturing in firearms, their parts and components and ammunition;

(f) States should develop and share technical expertise and training on preventing and combating illicit manufacturing of and trafficking in firearms, their part and components and ammunition;

(g) States must improve measures to prevent, detect and combat the illicit manufacturing of and trafficking in firearms, their part and components and ammunition;

(h) States will take the necessary steps to improve the international legal framework to prevent and suppress illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

2. In view of the regional differences that characterize illicit firearm trafficking and the different regulatory approaches taken by countries, Canada believes that relevant regional initiatives must be taken into account in the development of the negotiating text. Canada also works closely with industry, non-governmental organizations and other interested parties in this area.

3. The following regional initiatives and any other relevant cooperative arrangements should be taken into account:

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*Issued previously as document CICP/CONV/WP.11.

(a) The 1991 European Union Directive on the Control of the Acquisition and Possession of Weapons;

(b) The Organization of American States (OAS) Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials;

(c) The OAS Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components, and Ammunition.

4. Canada believes that the following issues need to be discussed:

(a) *Definitions of firearms and their essential parts and components, ammunition, illicit manufacturing and trafficking*. Agreement will be needed on which firearms are to be the target of the protocol, that is, those proved to be of "criminal interest". The wide range of firearms that this is likely to encompass and the lack of any standard nomenclature to describe them will add great complexity to the task of definition;

(b) *Import-export and in-transit authorization-licensing regimes*. A key principle in the strategy to combat illicit firearm trafficking is a more effective regime as regards the legal commercial movements of firearms, their parts and components and ammunition, which is achieved through measures supporting greater transparency and better information. The task here will be to strengthen existing import-export control regimes and trade arrangements and practices and to make them compatible with the principles of a system of reciprocal import-export and in-transit authorizations for legal commercial transfers. It will also be necessary to obtain agreement that such a system does not include government-to-government transfers;

(c) *Firearm identification/tracking and tracing*. The principles behind the tracking of legal commercial movements and the tracing of firearms for the purposes of criminal investigations, evidentiary requirements and prosecutions are linked with the need for unique identification and record keeping on firearms. Record keeping in some States may not be adequate to confirm and validate queries on criminal investigations and movement of firearms that will be required by the principles that are to guide the drawing up of the draft negotiating text. It would also be prudent to conduct consultations with the industry on this matter;

(d) *Information exchange*. The issues in this area will be the need to establish a central point of contact, both for validation as regards the movement of items to be covered by the protocol and also for queries related to criminal investigations and prosecutions.

5. Other issues for discussion include technical assistance and cooperation; criminalization of offences; and reciprocal notification by States of transfers of surplus military firearms to the civilian market.

France*

[Original: English and French]

Article 1

Statement of objectives

The purpose of this Convention is to promote cooperation among the States Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying

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*Issued previously as document CICP/CONV/WP.2.

out their obligations under the Convention, the States Parties shall take necessary measures, including legislative and administrative measures consistent with the fundamental provisions of their respective domestic legislative systems.

Article 2

Definitions

For the purposes of this Convention:

1. "Organized crime" means the activities pursued [the acts committed] within the framework of [in relation with] a criminal organization.

2. A "criminal organization" means any group of [three or more] persons with hierarchial links or personal relationships durably established for the purpose of enriching itself or controlling territories or markets, internal or foreign, by unlawful means such as violence, intimidation or corruption, both in furtherance of criminal activity and in order to infiltrate the legitimate economy.

3. "Participation in a criminal organization" means the conduct of a person who:

(a) Concludes with one or more persons an agreement with a view to committing serious offences as defined under article 3 of this Convention; or

(b) Contributes deliberately to the activity of a criminal organization, either to facilitate the general criminal activity of the group or to serve its goals, or with full knowledge of the group's intention to commit serious offences.

4. "Money-laundering" means the acts described below, where they are intentionally committed and where their author is aware of the assets' origin as being proceeds from offences committed by a criminal organization:

(a) Conversion or transfer of assets with the aim of concealing or disguising the illegal origin of the said assets;

(b) Concealment or disguise of the nature, origin, location, structure, movement or real ownership of illegal assets or rights relating hereto;

(c) Acquisition, holding or use of the incriminated assets.

5. "Proceeds from crime" means any economic advantage accruing from criminal offences committed within the framework of [in relation with] a criminal organization. Such advantage may be an asset of any kind, tangible or intangible, movable or immovable, as well as the legal deeds or documents certifying title to or rights over the asset.

Article 3

Scope of application

1. This Convention shall apply to the prevention and prosecution of serious offences whose circumstances make it reasonable to suppose that they have been committed within the framework of [in relation with] a criminal organization.

2. Serious offences are those defined as such under this Convention and offences punishable by a prison sentence or deprivation of liberty of not less than [four years].

3. The circumstances that make it reasonable to suppose that a criminal organization is involved in the commission of an offence include:

(a) The presence of illegal traffic in person or goods;

(b) The amount of the illegal profits or economic prejudice;

(c) The transnational character of the offence;

(d) The extensiveness of the means employed or the complexity of the organization;

(e) The recourse to money-laundering.

Article 4

Offences and sanctions

1. Each State Party shall undertake to treat, in conformity with its domestic legal system, the following as criminal offences carrying effective, proportionate and deterrent sanctions:

(a) Participation in a criminal organization;

(b) Money-laundering.

2. For the purposes of applying paragraph 1 (b) of this article:

(a) The question of whether the principal offence falls under the criminal jurisdiction of the State Party shall be deemed irrelevant;

(b) It may be stipulated that the offence of money-laundering does not apply to the persons who have committed the principal offence;

(c) Knowledge, intention or final purpose, as constituents of the offence of money-laundering, may be deduced from objective factual circumstances.

3. Each State Party shall aggravate sentences for crimes or offences committed within the framework of [in relation with] a criminal organization as defined under article 2 of this Convention.

4. Each State Party shall also adopt measures to make the following liable to criminal sanctions:

(a) Attempting to commit offences as defined under paragraphs 1 and 3 of this article;

(b) Acting as an accomplice to the offences mentioned under paragraph 1 (b) and paragraph 3 of this article;

(c) Knowingly profiting from a crime or offence committed by a criminal organization.

Article 5

Jurisdiction

1. Each State Party shall take the necessary measures to establish its jurisdiction over the offences mentioned under articles 3 and 4 where such offence is committed in its territory or on board a vessel or aircraft registered in its territory.

2. A State Party may also establish its jurisdiction over any such offence in the following cases:

(a) Where the alleged offender is a national of that State;

(b) Where the offence is committed to the detriment of [against] that State or one of its nations.

3. This Convention does not preclude the exercise of any or all criminal jurisdiction established by a State Party in conformity with its domestic law.

4. The provisions of this article shall not affect obligations relating to the establishment of jurisdiction over offences in accordance with any other multilateral treaty.

5. Where more than one State Party can claim jurisdiction over an offence mentioned under this Convention, the States Parties concerned shall take pains to coordinate their action efficaciously, especially as regards the conditions of prosecution and arrangements for mutual legal assistance.

6. A State Party shall notify the Secretary-General of the establishment of jurisdiction pursuant to paragraph 2.

Article 6

Identification, freezing, seizure and confiscation

1. Each State Party shall adopt the measures needed to identify, freeze or seize any instrumentality or proceeds of the offences mentioned under this Convention, with a view to their eventual confiscation.

2. Each State Party shall adopt the measures required to confiscate:

(a) The proceeds of serious offences, or assets of a value equivalent to that of such proceeds;

(b) Property, equipment and other assets used or intended to be used for committing serious offences.

3. Each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. States Parties shall not refrain from acting under the provisions of this paragraph on the ground of bank secrecy.

Article 7

Liability of legal [corporate] persons

1. Each State Party shall take the measures needed to ensure that legal [corporate] persons may be held liable where they profit from a criminal activity or participation in the working of a criminal organization.

2. Subject to the fundamental legal principles of the State Party, the liability of the legal [corporate] person may be criminal, civil or administrative.

3. Such liability shall be incurred without prejudice to the criminal liability of the natural persons who have committed the offences or of their accomplices.

4. Each State Party shall, in particular, ensure that legal [corporate] persons may be punished in an effective, proportionate and deterrent manner, and that substantial economic penalties may be imposed on them.

Article 8

Prosecution, sentencing and adequate sanctions

1. Each State Party shall make the offences mentioned under this Convention punishable by sanctions commensurate with their seriousness, such as imprisonment, other forms of deprivation of liberty, fines and confiscation.

2. States Parties shall endeavour to ensure that any discretionary legal powers conferred under their domestic law and connected with the prosecution of persons for offences mentioned under this Convention are exercised so as to maximize the effectiveness of the detection and enforcement measures applying to those offences, due account being taken of the need to deter the commission of such offences.

3. States Parties shall ensure that their courts or other competent authorities bear in mind [take into account] the serious nature of the offences mentioned under this Convention when considering the early discharge or release on parole of persons convicted of such offences.

4. Each State Party shall where appropriate set a long statute of limitations period under its domestic law in which to initiate proceedings concerning any of the offences mentioned under this Convention, that period being longer where the alleged offender has escaped being brought to justice [trial].

5. Each State Party shall ensure that the acts mentioned under articles 3 and 4 of this Convention and committed in its territory shall be indictable regardless of where in the territories of Member States the criminal organization is based or exercises its criminal activities.

6. Where instances of participation in a criminal organization fall under the jurisdiction of several Member States, those States shall consult in coordinating their action for initiating effective criminal proceedings.

7. Each State Party shall take appropriate measures, consistent with its legal system, to ensure that any person charged with or convicted of an offence mentioned under this Convention and present in its territory attends the relevant criminal proceedings.

France and Sweden*

[Original: English, French and Spanish]

Extradition

1. This article shall apply to the offences established by the States Parties in accordance with article __, paragraph __.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of any offence to which this article applies. Parties that require detailed legislation in order to use this Convention as a legal basis for extradition shall consider enacting such legislation as may be necessary.

4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

5. Extradition shall be subject to the conditions provided for by the law of the requested State Party or by applicable extradition treaties, including the grounds upon which the requested Party may refuse extradition.

6. In considering requests pursuant to this article, the requested State may refuse to comply with such requests where there are substantial grounds leading its judicial or other competent authorities to believe that compliance would facilitate the prosecution or punishment of any person on account of his race, religion, nationality or political opinions, or would cause prejudice for any of those reasons to any person affected by the request.

7. States Parties shall endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his presence at extradition proceedings.

9. The State Party in the territory of which the offender or the alleged offender is found, if, solely on the basis of the nationality of the person sought, it does not extradite that person, shall be obliged, upon request

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*Issued previously as document CICP/CONV/WP.7.

of the State Party seeking extradition, in cases where article(s) __ applies, whether or not the offence was committed in its territory, to submit the case without delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

10. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its law so permits and in conformity with the requirement of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the law of the requesting Party or the remainder thereof.

11. Any person regarding whom proceedings are being carried out in connection with any of the offences set forth in article(s) __ shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the law of the State in the territory of which that person is present.

12. States Parties shall seek to conclude bilateral and multilateral agreements to carry out or to enhance the effectiveness of extradition.

13. States Parties may consider entering into bilateral or multilateral agreements, either ad hoc or general, on the transfer to their country of persons sentenced to imprisonment and other forms of deprivation of liberty for offences to which this article applies, in order that they may complete their sentences there.

14. With respect to the offences as defined in article(s) __ of this Convention, the provisions of all extradition treaties and arrangements applicable between States Parties are modified as between States Parties to the extent necessary to give effect to the provisions of this Convention.

Germany*

[Original: English]

1. The most difficult and time-consuming issue in the discussions on the drawing up of the proposed Convention against Transnational Organized Crime has been and probably will be in future meetings the scope of application of the Convention. The Open-ended Intergovernmental Ad Hoc Committee has up to now examined in principle three alternatives:

(a) Use of the "statement of objectives" to provide a frame of reference for the entire Convention;

(b) Use of a "seriousness test" combined with an "organized nature test";

(c) Use of either an exhaustive or illustrative list of offences.

2. One proposal (Finland) now suggests that the Convention should apply to serious crime when the circumstances provide reasonable grounds to believe that a criminal organization was involved in the commission of the crime and spells out some of the circumstances under which this may be assumed. In the field of transborder judicial cooperation (extradition, mutual assistance, freezing of assets and enforcement of foreign confiscation orders), this suggestion immediately raises the question as to whether only the requesting State has to have reasonable grounds to assume a link to "organized crime" or whether this is true for the requested State also. In the light of the principle of dual criminality, one would probably have to assert the second possibility.

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*Issued previously as document CICP/CONV/WP.8.

This would in practice lead to a very heavy burden of proof, especially in the field of mutual assistance when the offence has just been discovered and, by ordinary experience, it seems to be linked to organized crime but no such proof is available. Clearly, this would lead to serious lacuna in the international fight against organized crime. On the other hand, when a request for extradition or the execution of a confiscation order is made, such a link to organized crime will probably be easier to assess.

3. Taking into account the Japanese non-paper (E/CN.15/1998/11, appendix IV), Germany would like to make the following tentative proposal.

"*Article X*

"*Scope of the Convention*

"1. The purpose of this Convention is to promote cooperation among the Parties so that they may address more effectively the various aspects of organized crime having an international dimension. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems. [art. 1, option 1, E/CN.15/1998/11, appendix 1]

"2. For that purpose, unless the context requires otherwise, organized crime shall be deemed to be any serious crime, committed within the jurisdiction of two or more States, that is punishable under the laws of the requesting Party and of the requested Party by imprisonment or other deprivation of liberty for a maximum period of at least two years or by a more severe penalty.[1]

"3. The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and the principle of non-intervention in the domestic affairs of other States.

"4. A Party shall not undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic law. [United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, art. 2, paras. 2 and 3]

"*Extradition*

"1. This Article shall apply to serious offences as defined in article X, paragraph 2, under the condition that:

"(a) The offence was committed by a member of a criminal organization as defined in article Y; or

"(b) The offence is a predicate offence of money-laundering under the law of the requesting Party.

"2. [Art. 6, paras. 2-12, of the 1988 Convention as appropriate].

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[1]This does not however exclude the possibility of foreseeing a ground for refusal in the field of mutual assistance in criminal matters, for example, if the offence to which the request relates would not be considered to be linked to organized crime if committed under the jurisdiction of the requested State Party.

"*Money-laundering*

[Art. 4 and 4bis, appendix 1, E/CN.15/1998/11]

"'Predicate offence'" means any criminal offence that under the law of a Party is punishable by deprivation of liberty or imprisonment for a period of at least four years or was committed by a member of a criminal organization as defined by article Y as a result of which proceeds were generated that may become the subject of an offence as defined in article 4 of this Convention."

Switzerland*

[Original: English]

Views on marking of small arms and light weapons

Some aspects of the problem

1. It seems obvious that marking cannot be a goal in itself, but the information provided by a reliable system of marking is an essential element of accountability and transparency, in particular, in the criminal or the political sense. Without precise information, it is impossible for a prosecutor to provide sufficient evidence, or to create the openness required for confidence and stability. Moreover, information is of little value if Governments, manufacturers and owners of small arms and light weapons are not prepared to assume responsibility for their proliferation and use.

2. It might be considered a basic requirement that marking should enable us to assign any weapon or explosive to its manufacturer and registered owner. It should also be possible to elucidate the path a weapon has taken from the manufacturer to the end-user. An essential condition of this basic requirement is the registration of the tagged code, together with information on the owner of the weapon.

3. The benefits of accurate information through marking are easily lost, however, when tagged weapon parts are replaced by unmarked parts or codes are deleted. Furthermore, the widespread production of weapons under licence makes it difficult to distinguish for instance a Russian-made AK-47 assault rifle from a Chinese-made one, or a Swiss-made anti-aircraft gun from one produced in the United States. This problem is aggravated by the lack of a universally agreed standard of information for tagging codes.

Preliminary thoughts on marking techniques

4. Tagged weapon parts may easily be replaced or codes deleted. So, firstly, a specific working group in Switzerland examined whether it would be possible to mark a part that could be replaced; secondly, whether one could mark a part such that erasure of the code would render the weapon inoperable; and, thirdly, whether it would be possible to mark a weapon with a code that could be deleted.

5. The answers to the first and second questions were unfortunately negative.

6. Firstly, it seems almost impossible to produce a part of a weapon that cannot be exchanged. Small arms are relatively easy to manufacture. The skills required are not too advanced, as the example of Afghan backyard manufacturers of AK-47 assault rifles reveals. As far as light weapons are concerned, the situation is slightly

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*Issued previously as document CICP/CONV/WP.19.

different, owing to the higher pressures of the stronger charges fired. The strain on essential parts of the weapon, such as barrels, bolts and receivers, is much greater. Thus, it should be more difficult to obtain the high-quality steel required for the reliable functioning of the weapon. However, even the essential parts of light weapons may be replaced, although the respective costs are higher.

7. Secondly, according to our knowledge, marking on weapons usually has a depth of between 0.1 mm and 0.3 mm. The most common methods of deleting markings are grinding and drilling. Weapon parts where deleting the markings would render the weapon inoperable would therefore have to be parts with small tolerances. Those parts are mostly within the trigger system or the bolt system, and are by themselves so small that it is almost impossible for the manufacturer to tag them with reasonable expenditure.

8. Concerning the third question, the working group considered two possibilities, either rendering the marking inaccessible or making it invisible. Since the results were quite encouraging, respective efforts were increased. Together with police services and representatives of Swiss defence industries, we focused on three techniques for marking weapons: laser marking within the material, stamp marking of raws and marking of colours or synthetics with glass bubbles.

9. Codes marked by such techniques could not be seen by a normal citizen, but they could easily be identified and made visible by government experts with supportive equipment. To facilitate identification by non-governmental actors, the invisible codes should be applied additionally and not alternatively to conventional visible marking techniques. Furthermore, to achieve an even higher degree of reliability, it might be possible to combine the invisible techniques.

Additional requirements

10. Although it seems realistic to mark weapons with codes that are in principle inaccessible or invisible, it is obvious that the parts may be replaced by anybody who simply presumes the existence of hidden codes, even if he has not located them.

11. Thus, the next question was whether it would be possible to raise the cost of replacing marked parts. Here, we face a dilemma: police services say the more markings there are, the more expensive replacement of the specific parts becomes. Defence industries say the fewer markings there are, the cheaper production gets. A possible solution could be to mark those parts which are most difficult and most expensive to replace or rebuild. We believe that the Swiss practice of marking small arms, namely, by tagging barrel, bolt and butt, may constitute a sensible compromise.

12. Another point is how to identify unambiguously the origin of a weapon, taking into account the problem of licensing and globalization of trade.

13. It might be helpful to establish an accepted standard. This standard code should contain more information than the mere serial number of the weapon. It should also be relatively cheap and easy to apply by manufacturers. Therefore, such a code should be defined with the help of police forces and weapon manufacturers of countries most active in the field.

14. Furthermore, it seems clear that such an agreed standard for marking would need as wide a participation as possible to gain the utmost benefit. We believe that a system of incentives for both Governments and defence industries should be established, with a view to encouraging them to join such an agreement on a standard.

For comments, questions and suggestions on marking please refer to:

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Tunisia* **

[Original: French]

Article 1

1. In the definition of "organized crime", a distinction should be drawn between the criminality of individuals and collective criminal enterprise. We therefore suggest that "organized crime" be defined as any criminal activity undertaken by more than one person without a fixed minimum being set for the number of persons making up the group.

2. In addition, the aim sought by organized criminal activity must be defined as the pursuit of material profit; the control of territories and markets and infiltration of the legitimate economy are no more than means to that end.

Article 1, subparagraph (f)

3. The terrorist acts referred to in this subparagraph need to be defined. Are the acts in question terrorist acts as defined by the domestic legislation of countries or are they acts as governed by the relevant international conventions or, again, are they terrorist acts as defined by the two United Nations declarations adopted by the General Assembly at its forty-ninth and fifty-first sessions concerning measures to combat international terrorism?

4. We propose that paragraph 2 be deleted from article 1, since it adds nothing to the initial definition.

5. Article 1 should also include a reference to incitement to the acts enumerated and also to attempts to commit those acts.

Article 2

6. We would suggest adding to paragraph 2 of this article the idea that each State should also make punishable the act of recruiting persons to form a group or association for the purpose of engaging in organized crime, training such persons or giving them instruction in the bearing of arms, as well as the act of funding the formation of such groups.

Article 6

7. Given that article 2 requests States to establish participation or association as punishable offences and should also establish as such the other violations that we have proposed be added to article 2, we would suggest

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*Issued previously as document CICP/CONV/WP.3.

**The comments of Tunisia refer to the text of the draft Convention contained in document A/C.3/51/7.

that article 6 also mention the offences covered by article 2, in addition to those specified by article 1 and to be deemed extraditable offences.

8. The reference to the offences specified in article 2 will need to be repeated whenever there is a reference to the offences mentioned in article 1, namely, in articles 4, 5, 7, 8, 10 and 12.

Article 7

9. We would suggest that Contracting States whose domestic legislation does not permit the extradition of nationals be accorded the right to state that they do not consider themselves bound by this article, especially as all the Contracting States are required to take the necessary measures to establish their jurisdictional competence, even in the most complex cases. That said, States are best qualified to try their own nationals.

Article 8

10. There needs to be added a paragraph 3 specifying that, when the circumstances referred to in paragraph 2 obtain, the State requested to carry out extradition shall, while rejecting the request, itself undertake the prosecution and judgement.

Article 10

11. We propose that paragraph 1 of this article be concluded after the phrase "article 1 of the present Convention" and that the rest of the paragraph be deleted on the ground of being vague.

Turkey*

[Original: English]

Link between transnational organized crime and terrorism

1. The Government of Turkey strongly believes that coherent and cooperated efforts of the international community to combat all forms of transnational organized crime are of vital importance in ensuring the safety of the people and the strengthening of democracy, since transnational organized crime seriously threatens public order, peace and the human rights of individuals.

2. Turkey, being a target of terrorism herself, strongly condemns all kinds of terrorism, no matter what its source or objective is. She has consistently supported bilateral and multilateral cooperation to combat this evil.

3. She is convinced that such terrorist activities constitute one of the major threats against humanity and can only be prevented by the establishment of effective and serious international cooperation.

4. Turkey believes that no country should allow the use of its territory by terrorists or allow the provision of any facility that would enable terrorist organizations to plan or implement violent acts that harm civilians.

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*Issued previously as document CICP/CONV/WP.10.

5. Investigations on all forms of transnational organized crime in various countries prove that close links exist between different forms of transnational organized crime. Criminal organizations, by engaging in transnational criminal activities that yield very high profits, such as illegal trafficking in drugs, not only obtain extensive financial resources for executing other kinds of criminal activities such as terrorism, but also corrupt some officials, launder the proceeds obtained from their activities. In other words, it is obvious that one form of transnational organized crime gives birth to and fosters other forms of transnational organized crime.

6. Turkey has been successfully implementing a struggle against illegal production of and trade in drugs for many years. The lack of public authority in certain areas of the Middle East, in particular in northern Iraq during the last decade, has caused certain terrorist groups, mainly the Kurdistan Workers Party (PKK), to take part in all stages of illegal trafficking of drugs. Those groups utilize the finances they have obtained to procure firearms and to execute terrorist acts against civilians. They are also involved in money-laundering to conceal their resources. This case very clearly points to the links between terrorism and other forms of transnational organized crime, which have already been mentioned generally in several international instruments and forums.

7. The PKK is a terrorist organization carrying out all kinds of organized crime and illicit drug trafficking. In fact, in 1997, 2,455.550 kg of heroin, 13,357.817 kg of hashish, 4,255.14 kg of morphine base, 1,125.258 kg of cannabis, 22,440.440 kg of acetic anhydride, 100 g of cocaine, 20,000 amphetamine tablets and 1,080 kg of sodium bicarbonate that were confiscated in Turkey were found to be linked with the PKK and 551 PKK offenders were caught in connection with the issue.

8. Moreover, the PKK is utilizing illegal migrants in Europe for its organized criminal activities. It is also carrying out money-laundering in the form of drug-for-money exchanges, laundered by buying real estate. PKK activities in Turkey and Europe are clear indications of the linkage between terrorism and organized crime in all its forms, such as illegal migration, money-laundering and illicit drug trafficking.

Scope of the Convention against transnational organized crime

9. In this context, Turkey considers that the Convention against Transnational Organized Crime should cover all forms of transnational organized crime and terrorism and should foresee effective measures in this regard. The Convention will thus constitute a cornerstone in the fight against transnational organized crime.

10. For this purpose, beyond theoretical and idealistic concerns, realities in the area of transnational organized crime should be scrutinized and the most appropriate and balanced measures should be developed.

11. Terrorism as a form of transnational organized crime and the links between all forms of transnational organized crime should be explicitly emphasized in the draft Convention against Transnational Organized Crime. To that end, the article on the scope of the Convention should include an illustrative list of transnational organized crimes, which covers terrorist acts explicitly, so that misinterpretations will not occur as regards criminalized offences under the Convention. Otherwise, it is possible to foresee that the effectiveness of the Convention will be restricted to a great extent. In this regard, Turkey reiterates that she is in favour of option 3 of article 2 of the draft Convention against Transnational Organized Crime given in the report of the Commission on Crime Prevention and Criminal Justice on the work of its seventh session.[1]

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[1] *Official Records of the Economic and Social Council, 1998, Supplement No. 10* and corrigendum (E/1998/30 and Corr.1).

United Kingdom of Great Britain and Northern Ireland*

[Original: English]

Combating illegal manufacturing of and trafficking in firearms, their parts and components and ammunition

Statement of principles

We hereby endorse the following principles, which we recommend to all countries to assist in combating illegal manufacturing of and trafficking in firearms, their parts and components and ammunition:

1. There must be no safe havens for those who participate in the foregoing illegal activities.

2. States should adopt effective methods of firearm identification and tracing.

3. Diversion into the illegal market of legally traded and held firearms must be prevented.

4. States must improve cooperation and exchange of information and data for law enforcement purposes on the foregoing illegal activities.

5. States must pursue greater international cooperation through mutual assistance regimes in prosecutions relating to the foregoing illegal activities.

6. States should develop and share technical expertise and training on preventing and combating the foregoing illegal activities.

7. States must improve measures to prevent, detect and combat the foregoing illegal activities.

8. States will take the necessary steps to improve the international legal framework to prevent and suppress the foregoing illegal activities.

Action plan

In support of the principles relating to the illegal manufacturing of and trafficking in firearms, their parts and components and ammunition, members of the Group of Eight major industrialized nations intend to, and encourage other States to:

1. Establish as criminal offences under their domestic law the foregoing illegal activities and include such forms of complicity as are generally foreseen in the respective national law.

2. Adopt such measures as may be necessary for each State to establish jurisdiction over the offences mentioned above when the offence is committed in its territory; and if a State considers it appropriate and the offence violates the State's domestic law, when the offence was committed outside the State's territory by one of its nationals or by a person who habitually resides in its territory.

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*Issued previously as document CICP/CONV/WP.5.

3. Consider such measures as may be necessary for each State to establish jurisdiction over the offences mentioned above when the alleged criminal is present in its territory and it chooses not to extradite such person to another country solely on the ground of the nationality of the alleged criminal.

4. Upon request of the State seeking extradition, take appropriate action to submit the offences mentioned above to the competent authorities for prosecution where the State does not extradite the alleged criminal solely on the ground of the nationality. In doing so, that State should give the same priority, personnel and financial resources as it would for other similar serious crimes committed in its territory.

5. Mark firearms appropriately at manufacture and following importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the source of the firearms can be traced.

6. Encourage the firearm manufacturing industry to develop measures against the removal of markings.

7. Cooperate with the International Criminal Police Organization (Interpol) to study the feasibility of developing an information system to assist in the identification of firearms and ammunition.

8. Respond accurately and promptly to tracing requests from other States.

9. Assure the retention for a reasonable time of the information and intelligence necessary to trace and identify illegally manufactured or trafficked firearms.

10. Through national central points of contact make use of knowledgeable personnel to ensure timely exchange of information relating to the foregoing illegal activities and to exchange information with each other by means of direct communication when necessary.

11. In urgent and appropriate cases, accept and respond to mutual assistance requests relating to the foregoing illegal activities by expedited but reliable means of communication.

12. Establish or maintain an import/export and in-transit licensing or similar authorization regime for the international transfer of firearms.

13. Take appropriate steps to ensure that sufficient law enforcement, security/intelligence agencies and customs personnel are trained, equipped and dedicated to the task of combating the foregoing illegal activities.

14. Arrange joint training and exchange programmes.

15. Promote effective multidisciplinary coordination among all relevant agencies at national and international levels to address the problem of the foregoing illegal activities.

16. Obtain the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms to prevent and detect the foregoing illegal activities.

17. Encourage public support and cooperation in the prevention and detection of the foregoing illegal activities.

18. Prevent illegally manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal has been

officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

19. Encourage the adoption of appropriate measures to prevent the reactivation of deactivated firearms, when such reactivation is a crime under the State's domestic laws.

20. Work toward the elaboration of a binding international legal instrument to combat the foregoing illegal activities in the context of a United Nations Convention against Organized Transnational Crime and taking into account existing international instruments and other ongoing initiatives.

United States of America*

[Original: English]

Comments on the scope of the United Nations Convention

A. Draft text

Article 2

Scope of application

This Convention shall, except as otherwise provided herein, apply to the prevention, investigation and prosecution of organized criminal activity as defined in article 2 *bis* and to the offences in articles 3 and 4.

Article 2 bis

Definitions

For the purposes of this Convention:

1. "Organized criminal activity" means [the commission of] serious crime involving a group of [three] or more persons, [either for its own sake or] for any purpose relating, directly or indirectly, to the obtaining of a financial or other material benefit.

2. "Serious crime" means conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least [ ] years, or more serious penalty.

(a) For the purpose of implementing articles __ of this Convention [pertaining to criminalization under articles 3 and 4 and other domestic obligations], a State Party shall consider this definition to refer to a criminal offence under its laws.

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*Submitted during the third meeting of the Friends of the Chair, held in Vienna on 5 and 6 November 1998.

(b) For the purpose of implementing articles __ of this Convention [pertaining to international cooperation], a State Party may deny cooperation as to conduct that would not also constitute a serious crime under its laws.

B. Other comments

1. The scope of the Convention should be flexible, in the sense that different tools may need to have different scope. To facilitate this, the "scope" article will probably need words such as "except where otherwise provided".

2. The Convention should fulfil the mandate of facilitating the prevention, prosecution and investigation of transnational organized crime. The achievement of this objective requires some tools to be applied to a broader class of conduct, however, because of the difficulty for practitioners, during the earlier stages of an investigation, of demonstrating the involvement of transnational organized crime.

3. The Convention should address organized crime in general. It should not be limited to highly structured and enduring organizations like the Mafia.

4. Article 1 of the Convention should include crimes having an international aspect, but it may not be necessary to limit the Convention expressly to transnational crime. A decision on whether, and in what form, to include a transnational element should be deferred until examination of each article has been completed.

5. The Convention should not apply expressly to terrorism, but it should not exempt terrorists who commit organized crime offences.

6. The requirement of a purpose to obtain a financial benefit is important, as this aids in excluding crimes of terrorism. However, not all relevant crime is motivated by profit or material benefit (e.g. computer hacking or "cooperative" distribution of child pornography). It is for consideration whether this requires an adjustment of the United States' definition, for example, by including crime committed for its own sake or by some formulation that would otherwise include non-political ends that have no pecuniary motive. However, the formulation should not be so broad that it would turn the Convention into a global serious crime instrument. An alternative would be to limit the general scope to profit-making crime, but to allow some tools to be applied more broadly.

7. Offences that do not have a direct profit motive but serve to expand and maintain a criminal organization should be included in the scope of the Convention.

8. The preference would be for a broad and simple description of the type of organized criminal activity aimed at, of the type set out in the draft text above.

9. Further consideration is needed on whether the Convention should apply, at least in some respects, to legal activities of criminal organizations (such as acquisition of property).

10. It is desirable that the mutual assistance article does not unduly impede the ability of a requesting State to obtain assistance at an early stage of the investigation, when it may not be able to demonstrate the involvement of organized crime to the satisfaction of the requested State. This potential problem could be addressed in a number of ways. One approach might be to extend application of the article to cover all serious crimes. However, if this approach is followed, a mechanism will be needed to allow States Parties to apply the Convention more narrowly (e.g. only in organized crime cases). Further consideration is required on which approach would be preferable.

11. The obligation to criminalize participation in a criminal organization (or association or conspiracy) should not necessarily be restricted to transnational crime. A more detailed definition of "criminal organization" is appropriate for this article (perhaps drawing on the European Union's Joint Action).

12. In accordance with the recommendations of the Financial Action Task Force, States should be required to criminalize the laundering of the proceeds of appropriate serious crimes, regardless of whether the crime is organized or transnational.

13. States should be required to assume powers to freeze and confiscate proceeds and instrumentalities of appropriate serious crimes, regardless of whether the predicate offence is organized or transnational.

14. The provisions on extradition should apply at least to the offences of money-laundering and participation in a criminal organization, but should not necessarily apply to other offences covered by the Convention. Dual criminality and other usual safeguards should apply.